

## HB 204 – MOCK GRAY BILL – At the Request of the Montana Trial Lawyers Association

This gray bill has NOT been reviewed by the bill drafter.

## HOUSE BILL NO. 204

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO LIABILITY WAIVERS AND RELEASES;  
ALLOWING THE USE OF PROSPECTIVE LIABILITY WAIVERS AND RELEASES TO LIMIT LIABILITY FOR DAMAGES OR  
INJURIES SUSTAINED FROM PARTICIPATING IN SPORTS OR RECREATIONAL OPPORTUNITIES; AMENDING SECTION  
SECTIONS 27-1-753 and 28-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the citizens of Montana and visitors to this state should enjoy the maximum ability to participate in sports or recreational opportunities; and

WHEREAS, public, private, and nonprofit entities that provide sports or recreational opportunities to citizens and visitors to this state need and deserve a measure of protection against lawsuits; and

WHEREAS, citizens and visitors to this state have a fundamental right and responsibility to make decisions concerning the activities in which they participate and the contracts and agreements in which they desire to enter; and

WHEREAS, individuals are accustomed to making conscious choices on their own behalf regarding the benefits and risks of various activities that are available; and

WHEREAS, such choices, when voluntarily made upon consideration of appropriate information, should not be ignored, but should be afforded the same value and legal effect as other choices and contractual obligations; and

WHEREAS, prospective liability waivers and releases encourage the availability and affordability of sports and recreational opportunities to citizens and visitors; and

WHEREAS, the Legislature intends to encourage the continued availability of sports or recreational opportunities in this state by shielding providers of such activities from claims resulting from conduct that constitutes ordinary negligence or for risks that are inherent in the sport or recreational opportunity; and

WHEREAS, the Legislature does not intend for liability waivers and releases to be used in a manner that would allow a person to waive or release claims for willful, wanton, reckless, or grossly negligent acts or omissions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1.~~ Section 28-2-702, MCA, is amended to read:

~~"28-2-702. Contracts that violate policy of law — exemption from responsibility — exception. (1) All contracts that have for their object, directly or indirectly, to exempt anyone from responsibility for the person's own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent, are against the policy of the law.~~

~~(2) This section does not prohibit a written waiver or release entered into prior to engaging in a sport or recreational opportunity for damages or injuries resulting from conduct that constitutes ordinary negligence or for risks that are inherent in the sport or recreational opportunity.~~

~~(3) For purposes of this section, "sport or recreational opportunity" has the meaning provided in 27-1-752."~~

**27-1-753. Limitation on liability in sport or recreational opportunity.** (1) A person who participates in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity, whether those risks are known or unknown, and is legally responsible for all injury or death to the person and for all damage to the person's property that result from the inherent risks in that sport or recreational opportunity.

(2) A provider is not required to eliminate, alter, or control the inherent risks within the particular sport or recreational opportunity that is provided.

(3) (a) Sections 27-1-751 through 27-1-754 do not preclude an action based on the negligence of the provider if the injury, death, or damage is not the result of an inherent risk of the sport or recreational opportunity.

(b) This section does not prohibit a written waiver or release entered into prior to engaging in a sport or recreational opportunity for damages or injuries resulting from conduct that constitutes ordinary negligence or for risks that are inherent in the sport or recreational opportunity. [the heart of HB 204 as passed by House]

(c) Any waiver or release for a sport or recreational opportunity, at a minimum, must:

(i) state the known inherent risks of the sport or recreational opportunity, and such statement may include the term "including, but not limited to," and:

(ii) state in bold font typeface the following statement: **By signing this document you are waiving your legal right to a jury trial to hold the provider legally responsible for any injuries you may suffer due to the provider's negligence – the failure to act as a reasonable provider would in similar circumstances.**

(d) Any waiver or release for a sport or recreational opportunity may still be challenged on any legal grounds.

(e) Any waiver or release for a sport or recreational opportunity executed in compliance with this section is not prohibited by or subject to the provisions of Section 28-2-702.

(4) Sections 27-1-751 through 27-1-754 do not apply to a cause of action based on the design, manufacture, provision, or maintenance of sports or recreational equipment or products or safety equipment used incidental to or required by the sport or recreational activity.

***Not proposed by MTLA, but required by the coalition: "28-2-702. Contracts that violate policy of law -- exemption from responsibility -- exception. (1) With the exception of release and waiver documents in 27-1-753,*** all contracts that have for their object, directly or indirectly, to exempt anyone from responsibility for the person's own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent, are against the policy of the law.

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.